IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

APPEAL FROM ORDER No. 212 of 2003

For Approval and Signature:

HONOURABLE MR.JUSTICE A.L.DAVE

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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FAKIRCHAND RAMLAL JADEJA - Appellant(s)
Versus
BIPINBHAI JAYANTIBHAI SANGHVI & 5 - Defendant(s)

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Appearance :
MR CHETAN K PANDYA for Appellant(s) : 1,
RULE SERVED for respondent No.1,
MR DR BHATT for respondents No. 2 - 5.
MR RM CHHAYA for Respondent No. 6,

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CORAM : HONOURABLE MR.JUSTICE A.L.DAVE

Date : 06/10/2005

ORAL JUDGMENT

1. The matter is listed today for final disposal. On all three calls, no

one appears for the appellant. Learned Advocate, Mr. Amrish Pandya, on behalf of learned Advocate, Mr. Bhatt, for respondents No.2 to 5 and learned Advocate, Mr. Chhaya, for respondent No.6 are present. The Court is constrained to dispose this matter of in absence of learned advocate for the appellant.

2. The appellant is the plaintiff in Civil Suit No.353 of 2003 before City Civil Court, Ahmedabad, which was preferred for permanent injunction restraining respondents No.1 to 5 from constructing of Amar Apartment, on the disputed land of Final Plot No.424 of T.P. Scheme No.6, on the ground that the said construction is against the rules and the bye-laws of the Municipal Corporation and that it infringes the easementary right of the appellant.

2.1 The appellant preferred Notice of Motion, Exh.5, before the Trial Court with identical interim relief. The Trial Court, initially, granted ad-interim relief in the form of maintaining status quo and issued notice to the other side and, after hearing both the sides, the Trial Court, by order dated 30th May, 2003, rejected the Notice of Motion and vacated the ad-interim status quo order. Aggrieved by the said order, the plaintiff has preferred this appeal.

3. The appellant had preferred Civil Application No.3636 of 2003 before this Court for interim relief. Ad-interim relief was granted in favour of the appellant in terms of paragraph 5(c). However, again after inter partes

hearing, by order dated 24th September, 2003, the said Civil Application came to be dismissed and ad-interim relief came to be vacated.

4. The case of the appellant is that respondents No.1 to 5, while making construction, have not followed the rules and the bye-laws of the Municipal Corporation and have not maintained requisite margins, resultantly, the easementary right of the appellant of light and air is infringed.

5. It appears from the order of the learned Judge that the Court Commissioner's report produced on record of the Trial Court indicated that respondents no.1 to 5 were making constructions as per original plan and there was no change in the construction introduced to the original plan. Respondents no.1 to 5 are the persons who were rendered homeless because of collapse of the flat in the devastating earthquake and are sough to be injuncted in the process of reconstructing the flats even as per the original design. On going through the order, it is clear that all relevant aspects have been taken into consideration by the learned Judge. This Court also, while considering the Civil Application for stay, has taken into consideration these aspects and has declined interim relief.

6. Learned Advocate, Mr. Chhaya, states that a report has been made by the Deputy Estate Officer of the Ahmedabad Municipal Corporation, which would show that the construction is as per approved plan and there is

no change in built-up F.S.I. Learned Advocate, Mr. Chhaya, also states that the construction is already over and building is now occupied by respondents No.1 to 5.

7. In light of the above fact-situation, this appeal merits dismissal and the same is dismissed. No costs.

[A. L. DAVE, J.]

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